

No. \_\_\_\_\_

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In The

**Supreme Court of the United States**

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JAMES F. GEORGE, III,  
MARGIE R. GEORGE,

*Petitioners,*

v.

CITY OF MORRO BAY,

*Respondent.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Can the Statute of Limitations or the doctrine of res judicata be invoked by the court to avoid enforcement of a statutory prohibition?
2. Did the bankruptcy court abuse its discretion in refusing to follow this Court's decision in *F.C.C. v. NextWave Personal Communications, Inc.*, 537 U.S. 293 (2003)?

**PARTIES TO THE PROCEEDING**

Petitioners are James F. George, III and Margie R. George.

Respondent is the City of Morro Bay.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

### **OPINIONS BELOW**

The Bankruptcy Court's Order After Trial (Appendix ("Pet. App.") 29-32) and the Order Regarding Debtors' Motion For New Trial (Pet. App. 33-36), dismissing petitioners' complaint on the grounds of the Statute of Limitations and res judicata are unpublished. The Bankruptcy Appellate Panel's (BAP) opinion affirming the bankruptcy court (Pet. App. 4-26) is published at 318 B.R. 729. The BAP order denying petitioners' motion for sanctions (Pet. App. 27-28) is unpublished. The court of appeals' memorandum, affirming the BAP (Pet. App. 1-3) is unpublished.

### **STATEMENT OF JURISDICTION**

The court of appeals entered its memorandum order affirming the BAP on August 10, 2005. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY

### PROVISIONS INVOLVED

This matter involves the following Constitutional and Statutory provisions.

#### United States Constitution

Amendment V which provides in pertinent part:

No person shall . . . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

#### United States Statutes

11 U.S.C. § 362(a)(3) provides in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities of --

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

11 U.S.C. § 362(b)(10) provides in pertinent part:

(b) The filing of a petition under section 301, 302 or 303 of this title, . . . does not operate as a stay—

(10) under section (a) of this section, of any act

by a lessor to the debtor under a lease of non-residential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property.

11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), and (f) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

11 U.S.C. § 365(d)(4) provides:

(4) Notwithstanding paragraphs (1) and (2) in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of non-residential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall surrender such nonresidential real property to the lessor.

11 U.S.C. 525(a) provides:

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved

July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C. §541(b)(2) provides:

(b) Property of the estate does not include -

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

11 U.S.C. §1101(1) provides:

(1) "debtor in possession" means debtor except when a person that has qualified under section 322